IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.912 OF 2003.

Mahendra Hasanand Soni & Anr. : Appellants.

versus

The Municipal Corporation of

Greater Bombay. : Respondent.

Mr.L.K.Tripathi for the appellants.

Mr.J.J.Xavier for the BMC/respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 6th July 2005.

ORAL ORDER

1. Heard the advocates. The appeal is pending for admission since last two years and more. The appeal is filed by the original plaintiffs. He was earlier served by the notice under Section 351 of the Bombay Municipal Corporation Act. That notice was not challenged by him. But when a notice under section 488 of

the BMC Act was served, he challenged the said notice. He did not produce the copy of the said notice along with the plaint on the ground that the notice was not issued to him individually. Whatever that may be, the fact remains that he did not, till the suit was disposed of, care to produce the said notice. Admittedly, the notice was given to him in respect of the upper portion of the premises i.e. first floor. His contention before the lower Court was that the 1st floor was there since 1954 and it is in same condition in which he has purchased. His contention was rejected by the Court because firstly the appellant could not produce any sanctioned plan for the 1st floor. Secondly, in the documents produced by the appellants, viz. Assessment Extract particularly Exhibit B., there is no mention of the 1st floor. What is mentioned is, ground floor and loft.

2. The counsel for the appellants contended that the trial Court erred in distinguishing the 1st floor, the loft and the mezzanine floor. But according to the counsel for the appellants, all three mean same thing. There is no substance in this submission. Loft is loft and, mezzanine

floor is mezzanine floor. It cannot be at all construed as 1st floor. When the burden was upon the appellants to prove that the 1st floor was legally constructed by him or his predecessor and when he has failed to discharge the said burden, then the suit was rightly dismissed. There is no substance in this appeal. The same is dismissed.

3. The counsel for the appellants also submitted that he has already applied to the corporation for regularisation. If that is so, he may pursue that remedy. But so far as the appeal stands, the same is dismissed. The authorities of the corporation are at liberty to take any decision with or without reference of this judgment.

[D.G.DESHPANDE]